

No. 83-193

Office: Supreme Court, U.S.
FILED

AUG 31 1983

ALEXANDER L. STEVAS,
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1983

RANIER & ASSOCIATES, HARRY H. RANIER
and ALGIN H. NOLAN,
v. *Petitioners,*

ROBERT H. WALDSCHMIDT, TRUSTEE,
Respondent.

On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Sixth Circuit

BRIEF FOR THE RESPONDENT IN OPPOSITION

ROBERT H. WALDSCHMIDT
Counsel of Record
11th Floor
First American Center
Nashville, Tennessee 37238
(615) 259-2179
Attorney for Respondent

Of Counsel:

COSNER & WALDSCHMIDT
11th Floor
First American Center
Nashville, Tennessee 37238
(615) 259-2179

QUESTION PRESENTED

Whether a decision of the United States Court of Appeals for the Sixth Circuit in this case holding that the judicially created "Net Result Rule" is not applicable to cases commenced under the Bankruptcy Reform Act of 1978, and that said doctrine has been codified as a "Subsequent Advance Rule" is correct.

PARTIES

The Petitioners statement relative to the parties is not disputed by the Respondent.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES	i
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	2
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR DENYING THE PETITION	2
CONCLUSION	4

TABLE OF AUTHORITIES

<i>Cases</i>	<i>Page</i>
<i>In Re Bishop</i> , 17 B.R. 180 (Bankr. N.D. Ga. 1982) ..	3
<i>In Re Fabric Buys of Jericho</i> , 22 B.R. 1013 (Bankr. S.D.N.Y. 1982) ..	3
<i>In Re Garland</i> , 19 B.R. 920 (Bankr. E.D. Mo. 1982) ..	3
<i>In Re Rustia</i> , 20 B.R. 131 (Bankr. S.D.N.Y. 1982) ..	3
<i>Jarecki v. Searle & Co.</i> , 367 U.S. 303, 81 S. Ct. 1579, 6 L. Ed. 2d 859 (1961) ..	3
<i>United States v. Menasche</i> , 348 U.S. 528, 75 S. Ct. 513, 99 L. Ed. 615 (1955) ..	3
 <i>Statutes</i>	
11 U.S.C. § 547 ..	1, 2, 3, 4
 <i>Miscellaneous</i>	
Senate Report No. 95-989, 95th Congress, 2d Sess. (1978) ..	2, 3
Ward and Schulman, "In Defense of the Bankruptcy Code's Racial Integration of the Preference Rules Affecting Commercial Financing," 61 WASH U.L.Q. 1 (1983) ..	3
Queenan, "The Preference Provisions of the Pending Bankruptcy Law," 82 COM. L.J. 465 (1977) ..	3
2 Norton Bankruptcy Law & Practice (1981) § 32.20 ..	3
4 Collier on Bankruptcy (15th Ed.) § 547.40 ..	3

IN THE
Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-193

RANIER & ASSOCIATES, HARRY H. RANIER
and ALGIN H. NOLAN,
Petitioners,

v.

ROBERT H. WALDSCHMIDT, TRUSTEE,
Respondent.

On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Sixth Circuit

BRIEF FOR THE RESPONDENT IN OPPOSITION

Robert H. Waldschmidt, Trustee, hereby objects to the petition of Ranier & Associates, Harry Ranier, and Algin H. Nolan for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit in this case relative to the preference action and the inapplicability of the "Net Result Rule" under 11 U.S.C. § 547(b).

OPINIONS BELOW

Respondent would incorporate by reference the statement relative to opinions below cited in the petition for writ of certiorari.

JURISDICTION

Respondent would incorporate by reference the statement relative to jurisdiction cited in the petition for writ of certiorari.

STATUTORY PROVISIONS INVOLVED

Respondent would incorporate by reference the statement relative to statutory provisions involved cited in the petition for writ of certiorari.

STATEMENT OF THE CASE

Respondent would incorporate by reference the statement relative to statement of the case cited in the petition for writ of certiorari.

REASONS FOR DENYING THE PETITION

The Petition for Writ of Certiorari should be denied because the opinion of the United States Court of Appeals for the Sixth Circuit is consistent with public policy, statutory construction, the legislative history, and decisions by other courts which have rendered decisions interpreting 11 U.S.C. § 547.

The Petitioners failed to cite in their petition any case decided by this Court construing or interpreting 11 U.S.C. § 547, and the Respondent is not aware of any such case. Therefore, the decision of the Court of Appeals is not inconsistent with any rulings of this Court.

The Petitioners argue that the "Net Result Rule" has been adopted by this Court in cases decided under the Bankruptcy Act of 1898. However, this case arose under the Bankruptcy Reform Act of 1978, which substantially restructured the law governing preferential transfers. The legislative history of 11 U.S.C. § 547(c)(4) clarifies the intent of Congress to modify the pre-existing "Net Result Rule" into a "Subsequent Advance Rule."

If the creditor and the debtor have more than one exchange during the 90 day period, the exchanges are netted out according to the formula in paragraph (4).

Senate Report No. 95-989, 95th Cong., 2d Sess. (1978). The formula specifically limits this preference exception to advances made "after such transfer." Thus, the judicially created "Net Result Rule" has been eliminated by the Bankruptcy Reform Act of 1978, and has been replaced by the "Subsequent Advance Rule." See Ward and Schulman, "In Defense of the Bankruptcy Code's Radical Integration of the Preference Rules Affecting Commercial Financing", 61 WASH. U.L.Q. 1 (1983); 2 Norton Bankruptcy Law and Practice (1981) § 32.20; 4 Collier on Bankruptcy (15th Ed.) § 547.60; 16 WAKE FOREST L.R. 899; Queenan, "The Preference Provisions of the Pending Bankruptcy Law," 82 COM. L.J. 465, 476 (1977).

Bankruptcy courts in other circuits have developed the same approach to the "Net Result Rule" as that applied by the United States Court of Appeals for the Sixth Circuit. *In re Bishop*, 17 B.R. 180 (Bankr. N.D. Ga. 1982); *In re Garland*, 19 B.R. 920 (Bankr. E.D. Mo. 1982); *In re Rustia*, 20 BR. 131 (Bankr. S.D.N.Y. 1982); *In re Fabric Buys of Jericho*, 22 B.R. 1013 (Bankr. S.D.N.Y. 1982). Thus, the decision of the Court of Appeals does not create any conflict between the circuits that have ruled on the same issue.

Furthermore, the Court of Appeals observed that if the "Net Result Rule" were incorporated as a "judicial gloss" on 11 U.S.C. § 547(b)(5), as the Petitioners assert, the provisions of 11 U.S.C. § 547(c)(4) would be rendered meaningless. This court has previously ruled that statutes should be construed, if at all possible, in such a manner as to give all parts of the statute effect. *Jarecki v. Searle & Co.*, 367 U.S. 303, 81 S. Ct. 1579, 6 L. Ed. 2d 859 (1961); *United States v. Menasche*, 348 U.S. 528, 75 S. Ct. 513, 99 L. Ed. 615 (1955). Thus,

the Court of Appeals correctly ruled that the provisions of 11 U.S.C. § 547(c)(4) are controlling and that the "Subsequent Advance Rule" should be applied.

CONCLUSION

The decision of the United States Court of Appeals for the Sixth Circuit does not conflict with any decisions of the United States Supreme Court, does not conflict with any decisions from other circuits, and is in accord with the Congressional intent of 11 U.S.C. § 547 and the principles of statutory construction set forth by the United States Supreme Court. Therefore, the petition of Ranier & Associates, Harry H. Ranier and Algin H. Nolan for a writ of certiorari should be denied.

Respectfully submitted,

ROBERT H. WALDSCHMIDT
Counsel of Record
11th Floor
First American Center
Nashville, Tennessee 37238
(615) 259-2179

Attorney for Respondent

Of Counsel:

COSNER & WALDSCHMIDT
11th Floor
First American Center
Nashville, Tennessee 37238
(615) 259-2179